IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 7360 OF 2006

Mulchand Cooverji Shah..... Petitioner.

Versus

Smt.Ranjanben Navnitlal Jariwala... Respondent.

Mr. N.Dinkar Rao for the Petitioner.
None present for the Respondent.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

Heard learned Counsel appearing for the petitioner. None present for the respondent.

2. T. E. & R. Suit No. 77/84 of 2003 which was filed for seeking decree of eviction on the ground of arrears of rent and mesne profits came to be partly decreed by the learned Judge, Small Causes Court at Mumbai. By the judgment and order passed by the learned Judge on 8th July, 2005 the suit was partly decreed and the defendant was directed to handover vacant and peaceful possession of the suit premises to the plaintiff within three months. Aggrieved by the

said judgment and order, the defendant filed Appeal No. 527 of 2005 which came to be allowed and the decree passed by the trial Judge was set aside by the learned Division Bench of the Small Causes Court at Mumbai vide its judgment and order dated 21st April, 2006.

3. In this writ petition the judgment and order passed by the lower appellate court allowing the appeal and setting aside the judgment and order of eviction passed by the learned Judge, Small Causes Court at Mumbai, under the Bombay Rents Hotels & Lodging House Rates (Control) Act is challenged. In Writ Petition No. 4138 of 2006, I have already taken a view vide order dated 24th August, 2006 that such decree can be challenged by filing a civil revision application under Section 115 of the Code of Civil Procedure. I have further observed that when such a statutory remedy is available, a writ petition under Article 227 of the Constitution of India need not be entertained.

4. Hence, the writ petition is disposed of as such with liberty to the petitioner to file a civil revision application and if such a civil revision application is filed within a period of four weeks

from today, the period of pendency of this writ petition be taken into consideration for condonation of delay, if any.

5. Annexures to the petition memo be returned, if applied for.

6. Writ petition is disposed of, accordingly.

Sd/-

(B. H. MARLAPALLE, J.)